

DISCUSSION

I. Waiver

The Ninth Circuit recognizes strong public policy considerations justifying the enforcement of a defendant's waiver of his right to appeal or collaterally attack a judgment. *United States v. Novarro-Botello*, 912 F.2d 318, 321 (9th Cir. 1990). Waivers play an important role in the plea bargaining process and help ensure finality. *Id.* at 322. Generally, courts enforce a defendant's waiver of his right to appeal, as long as the waiver was "knowingly and voluntarily made" and "encompasses the defendant's right to appeal on the grounds claimed on appeal." *United States v. Nunez*, 223 F.3d 956, 958 (9th Cir. 2000) (quoting *United States v. Martinez*, 143 F.3d 1266, 1270-71 (9th Cir. 1998)).

Petitioner waived his right to collaterally attack his sentence in his plea agreement and when he plead guilty before the Magistrate Judge. Ex. 3; Ex. 4. The plea agreement states that "[i]n exchange for the Government's concessions in this plea agreement, the defendant . . . (d) waives the right to appeal or collaterally attack the plea, conviction, or sentence." Ex. 3, pg 2. Petitioner was specifically asked about this language when entering his plea and said that he understood and agreed to it. Ex. 4, pg 12. Petitioner's knowing and voluntary waiver of his right to collaterally attack his sentence bars the present motion.

II. 8 U.S.C. § 1326

Even if Petitioner had not waived his right to collaterally attack his sentence, his claims concerning § 1326 fail on the merits. Petitioner asserts three grounds in his motion: (1) denial of effective assistance of counsel because his counsel should have known § 1326 was unenforceable; (2) prosecutorial misconduct because the prosecutor charged him with violation of § 1326; and (3) lack of jurisdiction because this Court was not authorized to decide matters of illegal entry. While listed separately, the Court need only determine if 8 U.S.C. § 1326 is an enforceable constitutional statute because that is the only basis upon which Petitioner's claims rest. This question has been squarely addressed by the Ninth Circuit.

Does Congress have the authority to regulate immigration? Of course. May Congress, pursuant to that authority, enact criminal laws aimed at enforcing its immigration policies? Yes. Is § 1326 such a law? We hold today that it is.

